

The Honorable MARSHA J. PECHMAN

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

PIERCE COUNTY, et al.,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT
OF SOCIAL AND HEALTH SERVICES,
et al.,

Defendants.

NO. 3:23-cv-05775-RSL

DECLARATION OF KEVIN
BOVENKAMP

I, KEVIN BOVENKAMP, am over the age of 18 years of age, competent to testify to the matters below, and declare based upon personal knowledge:

1. I am the Assistant Secretary for the Behavioral Health Administration (BHA) of the Department of Social and Health Services (the Department). I make this declaration based on my personal knowledge and review of business records maintained at the Department in the normal course of business.

2. As Assistant Secretary, I am responsible for the operation of the State's three hospitals, including Western State Hospital (WSH), Eastern State Hospital (ESH), the Child Study and Treatment Center. I am also responsible for the operation of the Special Commitment Center located on McNeil Island. I am accountable for managing operational issues that cross the divisions within my administration, strategic planning, performance management, quality assurance, and risk management.

1 3. In my role I am familiar with efforts by the Department to maintain adequate bed
2 space for the various populations the Department serves, which includes felony civil conversion
3 commitments. These are individuals whose criminal prosecutions are converted to civil
4 commitment cases under Wash. Rev. Code 71.05. Through this civil conversion process, the
5 Department receives patients who have very serious charges dismissed, such as murder, sexual
6 violence perpetrated against children, sexual assaults, and serious physical violence, though the
7 Department has also traditionally received patients accused of less serious felonies, such as
8 malicious mischief or theft.

9 4. The Department has sought to increase bed space for its various populations
10 through a combination of building new spaces, re-purposing existing spaces, and purchasing new
11 space. The Department also works with the State of Washington Health Care Authority (“HCA”)
12 to take advantage of potential bed spaces the HCA can contract for. The HCA has contracted
13 for felony conversion beds that BHA may have access to, for felony conversion cases where
14 those patients have stabilized sufficiently that they may be transferred out of state hospitals.
15 However, these beds are neither equipped nor contracted to take new admissions or to perform
16 commitment evaluations in accordance with RCW 10.77.086(7). BHA has transferred some
17 felony conversion cases from state hospitals into HCA contracted beds once they have stabilized
18 on their treatment plan. It should be noted that the Department cannot make the unilateral
19 decision to transfer any patient into these contracted beds. Rather, the facility holds the power
20 to accept or reject the proposed transfer. There are no facilities currently contracted by the
21 Department for competency restoration purposes.

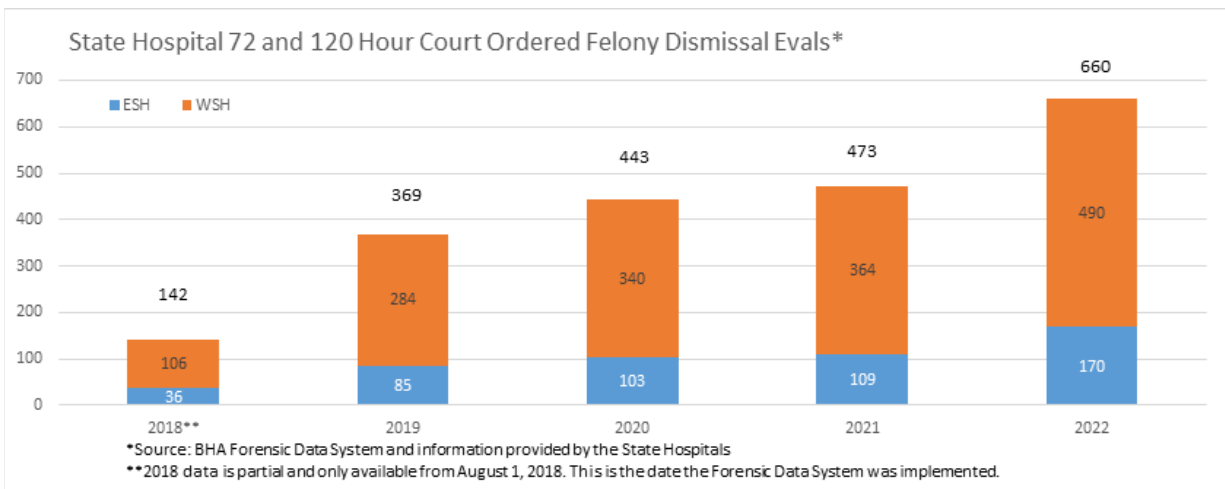
22 5. In addition to the civil conversion population, the Department is also responsible
23 for serving the forensic population, which includes *Trueblood* class members. Further, nearly all
24 of the patients in state hospitals are sent by Washington counties as part of civil conversion
25 proceedings.
26

6. The table below outlines recent efforts to increase bed space specifically for *Trueblood* class members. Additional efforts to increase bed space for class members, but not included in the table below, include a recent repurposing of felony conversion patient treatment spaces on Western State Hospital's C9 unit into ward space, and increasing the census of felony conversion patients small specialty wards into a full-census treatment ward on C1 and C4. These additional actions are creating an additional 40-50 beds of treatment capacity, beyond the projects listed in the table below and mitigate the risk of assigning felony conversion patients to beds designated for *Trueblood* class members.

Project Name	Beds	Target Population	Projected Opening
<i>Past Openings</i>			
Yakima Competency Restoration Center RTF	24	Competency restoration	Opened 2016, closed at direction of Federal Court
Maple Lane Competency Restoration Center RTF	30	Competency restoration	Opened 2016
Civil to forensic ward renovation at WSH	30	Competency restoration and evaluation patients	Opened 2018
Fort Steilacoom Competency Restoration Center RTF	30	Competency restoration	Opened 2019
ESH major construction and renovation project	50	Competency restoration and evaluation patients, overflow from WSH	Opened summer 2020
Renovation of E3/E4 wards at WSH	40	Competency restoration and evaluation patients	Opened February 2021
Maple Lane Oak Cottage	16	Felony conversion patients	Opened March, 2023
Emergent Community Hospital Contracts	75+	Felony conversion patients	Began 1st Quarter, 2023
<i>Future Openings</i>			
New construction of F9 and F10 wards at WSH	58	Competency restoration and evaluation patients	Opened April, 2023 for F9 and opened May, 2023 for F10
Maple Lane NGRI program	30	Not guilty by reason of insanity patients	Late 2023/early 2024
Three Clark County facilities	48	Felony conversion patients	Late 2024/early 2025

New forensic hospital	350	Competency restoration and evaluation, NGRI, and hard to place felony conversion patients	Construction commencing in 2023, completion estimated 2027-2029
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7. Sometimes courts order felony conversion for class members already at one of the state hospitals. As a result, it is not uncommon for a patient to start the day as a class member undergoing restoration treatment, but end the day as a civil conversion patient, all without ever having left the hospital. The reference table below depicts the increasing number of felony conversion cases in recent years. Unlike restoration cases, which have strict time limits on how long a patient can be committed to a state the hospital, conversion cases are subject to extended commitment under Wash. Rev. Code 71.05 until they can be safely discharged to the community, and have a much higher average length of stay, often a year or longer.



8. The Department has been conducting outreach to criminal courts and criminal justice partners to explain how the volume of civil conversion admissions results in a scarcity of bed space for competency restoration patients and vice versa as well as to encourage diversion of these cases whenever possible. Attempts at outreach failed to make a difference in referrals for competency restoration or civil conversions. Though the memo is still relatively recent, civil conversion orders have not yet slowed.

9. To the extent that the Department has, when no other choice was available, attempted to decline admission of a felony conversion patient, and instead encourage diversion

1 into other care systems, the Department has received strong push back and has even been
 2 court-ordered to continue to accept such patients. Since July 7, 2023, the Department has sent
 3 approximately 45 no-admit letters to counties regarding civil conversion patients referred by the
 4 counties to state hospitals because of the *Trueblood* order that same day. Additionally, since
 5 July 7, 2023, the Department has cleared over 80 civil conversion patients out of forensic beds
 6 in ongoing attempts to achieve compliance with the *Trueblood* orders from July 7 and August
 7 14, 2023 as well as the Permanent Injunction.

8 10. Patients who are committed as felony conversions under Wash. Rev. Code 71.05
 9 to the state hospital have traditionally received care and treatment within the “non-forensic” or
 10 civil beds at the state hospitals. Ensuring that felony conversion patients are regularly
 11 transitioned to the civil side of the hospitals has always been part of managing beds at the state
 12 hospitals. Traditionally, both Western and Eastern have done this well, and have been largely
 13 successful in limiting the presence of these conversion patients in beds that could otherwise serve
 14 competency restoration patients and *Trueblood* class members. This historical success was the
 15 result of concerted efforts by the hospitals to manage their civilly committed population,
 16 including a policy change that increased transfers before a patient had their
 17 Wash. Rev. Code 71.05 civil commitment hearing.

18 11. Recently, and in spite of concerted efforts to manage the growth of the civil
 19 commitment population, this population began to increase rapidly in 2022. I believe several
 20 factors have contributed to the growth in this population since 2022:

21 a. First, the Omicron wave of COVID-19, during the winter months of 2022,
 22 renewed a need for COVID protocol admission and movement limitations, and
 23 dramatically impacted all Department treatment facilities, by creating long backlogs of
 24 patients awaiting admission, and slowing discharges. While the Omicron wave has
 25 passed, all Department facilities continue to manage COVID-19 as part of the
 26 “new normal.” When a ward or facility has an outbreak, containment protocols are still

1 required. However, the Department has also evolved its practices to minimize ongoing
2 disruptions to facility operations. For example, Department facilities now have processes
3 in place to safely admit patients who are actively COVID positive, while minimizing
4 risks to staff and patient safety.

5 b. The second factor is a confluence of rising demand, the COVID Omicron
6 backlogs, and the transition of long-term civil beds from state hospital campuses to the
7 community. The COVID fueled backlogs and the newest spike in demand occurred while
8 the Department is beginning construction of the new forensic hospital on the WSH
9 campus. The new hospital will benefit the class member population by eventually
10 providing 350 new forensic beds. The project also requires demolition of certain
11 buildings on campus, including the aging South Hall, which resulted in the transfer of
12 long-term civil capacity to other settings in the community and a reduction in civil
13 treatment space on campus. Siting the new 350-bed hospital on the WSH campus avoids
14 the extra years of siting process (and possible litigation) that would be associated with a
15 new different location, and leverages other recent investments in modern facilities on the
16 campus. But there were no perfect siting options for the new hospital that allowed the
17 new hospital to be built without demolition of *some* of the existing treatment space.
18 South Hall contains some of the oldest actively used treatment spaces on the WSH
19 campus, and choosing to decommission this space allowed for preservation of the
20 Fort Steilacoom Competency Restoration Treatment Center in Building 27, recently
21 renovated using contempt fines, and currently providing restoration treatment to
22 class members. As a result of the South Hall demolition, approximately 180 long-term
23 civil beds on the WSH campus have been taken out of service. The decommissioning of
24 these long-term civil beds aligns with the State's system-wide plan to transfer long-term
25 civil treatment beds to the community. Anticipating the closures that would be necessary
26 to build the new 350-bed forensic hospital, the State, through the Health Care Authority,

1 contracted for long-term beds in the community. The State's plan calls for the number
2 of long-term community beds to continue to increase beyond those already opened.
3 Opening community civil capacity to replace reduced capacity on the state hospital
4 campuses is one aspect of the State's overall plan to transform the behavioral health
5 system in Washington.

6 c. Third, in recent years, felony conversion patients continue to be ordered
7 into the state hospitals by state superior courts in high numbers, trending upward in recent
8 years. This felony conversion demand has persisted despite opening of new beds in the
9 community, and the deployment of diversion programs throughout the state.
10 Additionally, the civil population of WSH has greatly changed as a result, with more
11 felony conversion patients making up the majority of the civil population, rather than
12 civil patients arriving under purely Wash. Rev. Code 71.05 civil commitments without
13 criminal justice involvement. More care and planning is often required prior to discharge
14 now, given the level of acuity and criminal history of the current civil patient population.

15 12. The court's order of August 14, 2023 clarified for the Department that non-violent
16 felony conversion patients cannot be allowed into ESH or WSH. As a result, the Department
17 has issued no-admit letters in those circumstances wherein counties attempt to have non-violent
18 felony conversions admitted for evaluation and treatment. The Department has turned away an
19 average of six non-violent felony conversion patients per week and urged the counties to utilize
20 their local resources.

21 13. As mentioned above, the State already has a plan in place to create long-term civil
22 treatment capacity in the community. The Department is also directly building additional
23 capacity through projects at Maple Lane and Clark County projects as well as through the
24 purchase and operation of the hospital in Tukwila. These projects will provide care specifically
25 for the civil conversion population and the Tukwila location is projected to add 113 beds alone
26 – but they are not currently operational yet.

CERTIFICATE OF SERVICE

I, *Becca Leigh*, state and declare as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. I hereby certify that on this 18th day of September 2023, I electronically filed with foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 18th day of September 2023, at Chehalis, Washington.

Rebecca Leigh

BECCA LEIGH
Paralegal